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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000240

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TAGS: PGOV KCOR KDEM PINR IZ
SUBJECT: IRAQI JUDGES DISCUSS ANTI-CORRUPTION ISSUES

REF: A. BAGHDAD 181
¶B. BAGHDAD 101

Classified By: ANTI-CORRUPTION COORDINATOR JOSEPH STAFFORD, REASON 1.4
(B AND D)

SUMMARY

¶1. (C) The Central Criminal Court of Iraq's top investigative judge, in familiar GOI terms, expressed resentment over Iraq's abysmal standing in Transparency International's global rankings on corruption. At the same time, he acknowledged the weaknesses of the GOI's anti-corruption institutions, the Commission on Integrity and Inspectors General, in particular. He stated that the controversial criminal code provision, 136(B), remained a significant obstacle to prosecution of corruption cases. Another investigative judge claimed that over 1,800 corruption cases had reached his office in 2008, but that most had not been brought to trial. We will look at possible ways to expand cooperation with the Commission on Integrity and Inspectors General and submit proposals to Washington; we will also seek further details on the prosecution of corruption cases and the outcomes. END SUMMARY.

CRITICISM OF TRANSPARENCY INTERNATIONAL

¶2. (C) Anti-Corruption Coordinator (ACC) met separately January 28 with the Central Criminal Courts of Iraq's (CCCI) chief investigative judge, Fayek Al-Zidan and the senior investigative judge handling anti-corruption cases, Magid Al-Araji. (NOTE: Ref a contains background on the CCCI, which is mandated to adjudicate anti-corruption cases, in particular. END NOTE) Judge Fayek acknowledged that Iraq had far to go in developing an effective anti-corruption (AC) regime. At the same time, he went on, in familiar GOI terms, to criticize Transparency International (TI) for its 2008 ranking of Iraq as tied for second as the world's most corrupt country. Judge Fayek asserted that the massive acts of corruption besetting Iraq in the initial years following Saddam's removal -- e.g., ministers and others plundering the government treasury of hundreds of millions of dollars and fleeing the country -- no longer occurred. He stated that post-Saddam GOI institutions, while still weak and unable to staunch much of the widespread corruption plaguing Iraq, nonetheless had now jelled to the point that they could at least prevent the looting of state resources on the scale of 2003-06. ACC urged that the GOI take the initiative to establish a dialog with the TI so as to familiarize it with the GOI's AC initiatives; Judge Fayek took this on board.

AREAS FOR IMPROVEMENT IN GOI'S AC REGIME

¶3. (C) Judge Fayek asserted that the abysmal performance of AC institutions, specifically, the Commission on Integrity (COI) and the Inspectors General (IG's) assigned to ministries and other GOI agencies, was a major factor in the limited effectiveness of the GOI's overall AC efforts. He

portrayed the COI -- envisaged in the constitution as the country's leading AC body -- as plagued itself by corruption as well as a dearth of competent, trained staff. The result, he continued, was that many of the AC cases that the COI submitted the CCCI for prosecution were so poorly prepared that they had to be thrown out. Turning to the IG's, Judge Fayek said they were severely hampered in their work by lack of independence from their respective ministers; it was common for the latter to prevent the ministry's IG from pursuing AC-related internal investigations or forwarding the results to the COI for further action. Asked how the USG could best help the GOI strengthen its AC regime, Judge Fayek urged us to undertake capacity-building efforts directed at the COI and IG's. ACC responded by noting current, substantial USG efforts in this area.

THE ISSUE OF 136(B)

¶4. (C) Judge Fayek agreed that 136(B), the controversial provision in the Iraqi Criminal Code that authorizes ministers to quash corruption-related and other criminal prosecutions of ministry officials, remained a key obstacle in the GOI's AC efforts. In response to query, Judge Fayek professed ignorance as to how often ministers had invoked 136(B) in 2008 in corruption cases. He shared his impression that ministers had resorted to 136(B) less frequently in 2008 than in previous years, but said he could not readily cite examples of ministers refraining from use of 136(B) in specific AC cases.

THE NUMBERS GAME

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¶5. (C) Judge Magid Al-Araji, subordinate to Judge Fayek and responsible for investigation of AC cases, claimed that his office had received over 1,800 cases from the COI in 2008. He indicated that most of these cases were never transmitted by the investigating judges to the CCCI's trial judges for prosecution for various reasons -- e.g., dismissal for lack of evidence, referral back to the COI for further investigation, dismissal due to alleged perpetrators' benefitting from the 2008 amnesty law (see ref b for background). Asked about the COI's claim that the courts had tried 386 corruption cases in 2008 and issued 87 convictions (ref b), Judge Magid responded that while these figures struck him as "reasonable," he could not verify them; he asked that we approach the CCCI's trial judges for verification.

COMMENT

¶6. (C) Judge Fayek, reputedly among the Iraqi judiciary's more dedicated and competent members, made clear his resentment at TI's ranking of Iraq; we will continue to urge Iraqi contacts to overcome that resentment and establish a dialog with TI so as to familiarize it with GOI's AC initiatives. His assertion notwithstanding, it is not clear that the GOI has in place adequate safeguards to prevent the kind of massive corruption by senior GOI officials that occurred during the 2003-06 period. Consistent with Judge Fayek's request, we will look at possible ways of expanding our capacity-building efforts with the COI and IG's and intend to submit proposals to Washington in due course. As for Judge Fayek's impression that 136(B) is being used less frequently to halt corruption-related prosecutions, it is not certain how positive a development this is, assuming his impression is accurate. For one thing, it is possible that ministers are resorting to other methods besides invocation of 136(B) to block corruption cases, e.g., pressuring IG's not to submit them to the COI to begin with. We will work to obtain further details on the use of 136(B) -- and on the

actual number and nature of AC-related convictions. END
COMMENT.
CROCKER